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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
MANCUSO INVESTMENT CORPORATION)
) No. 02-0781
Request for Declaratory Ruling or)
Alternative Application for a)
Certificate of Public Convenience)
and Necessity.)

Chicago, Illinois
May 6, 2003

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. DAVID G. GILBERT, Administrative Law Judge.

APPEARANCES:

CHAPMAN and CUTLER, by
MR. DANIEL J. KUCERA
111 West Monroe Street, 15th Floor
Chicago, Illinois 60603
Appearing for the Petitioner;

MR. JAMES E. WEGING and
MR. JOHN J. REICHART
160 North LaSalle Street, Suite C-800
Chicago, Illinois 60601
Appearing for Staff.

SULLIVAN REPORTING COMPANY, by
Tracy L. Ross, CSR

1		<u>I</u>	<u>N</u>	<u>D</u>	<u>E</u>	<u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>direct</u>	<u>cross</u>	<u>By</u>			
3	D.J. Mancuso	24	22					28	
4	William Marr	34							
5									
6									
7		<u>E</u>	<u>X</u>	<u>H</u>	<u>I</u>	<u>B</u>	<u>I</u>	<u>T</u>	<u>S</u>
8	<u>Number</u>	<u>For</u>	<u>Identification</u>			<u>In</u>	<u>Evidence</u>		
9	Staff Nos.								
10	1.00 - 1.03		22					36	
11	Staff No. 2.00							37	
12	Petitioner's								
13	Nos. 1 and 2		22					28	
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1 (Whereupon, Staff
2 Exhibit No. 1.00 was
3 marked for identification
4 as of this date.)

5 (Whereupon, Petitioner's
6 Exhibit Nos. 1 and 2 were
7 marked for identification
8 as of this date.)

9 JUDGE GILBERT: Pursuant to the authority of
10 the Illinois Commerce Commission, I now call
11 Docket 02-0781.

12 If I could have appearances for the
13 record, please, beginning with petitioner.

14 MR. KUCERA: Daniel J. Kucera, Chapman and
15 Cutler, 111 West Monroe Street, Chicago,
16 appearing for Mancuso Investment Corporation.

17 MR. WEGING: James Wearing, W-e-g-i-n-g, and
18 John Reichart, 160 North LaSalle Street, Suite
19 C-800, Chicago, Illinois 60601, (312) 793-2877
20 appearing on behalf of Commission Staff
21 witnesses.

22 JUDGE GILBERT: All right. I'll note that

1 we're here on petitioner's request for a
2 Declaratory Ruling or alternatively for a
3 Certificate of Public Convenience and Necessity.

4 Although I understand your preferred
5 outcome is a Declaratory Ruling that the
6 petitioner is not a public utility; would that be
7 correct?

8 MR. KUCERA: Exactly, Judge.

9 JUDGE GILBERT: We have a couple witnesses
10 participating by telephone. I understand there
11 are no motions from the parties, so why don't we
12 proceed with the case, Mr. Kucera.

13 MR. KUCERA: I have a question. Mr. Weging
14 and I are willing to stipulate to the admission
15 of our respective witnesses' testimony. How do
16 you want to handle the introduction of the
17 testimony into the record? Do you want to do it
18 by questioning the witnesses or by stipulation of
19 counsel?

20 JUDGE GILBERT: Do we have affidavits so we
21 can --

22 MR. WEGING: I did not get one prepared for my

1 witness. And, also, the second exhibit,
2 actually, couldn't come from that witness anyway
3 because it's really the answer to Mr. Mancuso's
4 question. So I'd actually think stipulation
5 would be just to avoid additional paperwork.

6 JUDGE GILBERT: Okay. We have the witnesses
7 here telephonically. We can take care of this
8 very easily.

9 Mr. Kucera, just call your witness and
10 that's how we'll do it.

11 MR. KUCERA: I'll call Mr. Mancuso. He needs
12 to be sworn, please.

13 (Witness sworn.)

14 JUDGE GILBERT: Go ahead, Mr. Kucera. A

15 D.J. MANCUSOá,
16 called as a witness herein, having been first
17 duly sworn, was examined and testified
18 telephonically as follows:

19 DIRECT EXAMINATION

20 BY

21 MR. KUCERA:

22 Q. Mr. Mancuso, can you hear me?

1 A. Yes.

2 Q. Please state your full name.

3 A. D.J. Mancuso, M-a-n-c-u-s-o.

4 Q. Are you an officer of Mancuso Investment
5 Corporation?

6 A. Yes.

7 Q. And what office do you hold?

8 A. President.

9 Q. In connection with this proceeding, did
10 you cause to be prepared, in a written question
11 and answer format, your direct testimony?

12 A. I didn't hear the question.

13 Q. In connection with this proceeding, did
14 you cause to be prepared, in a written question
15 and answer format, your direct testimony?

16 A. I'm hearing a lot of background noise
17 right now.

18 Q. We'll try one more time.

19 A. I can hear you good now.

20 Q. In connection with this proceeding, did
21 you cause to be prepared, in a written question
22 and answer format, your direct testimony?

1 A. Yes.

2 Q. And is that direct testimony contained in
3 the document that has been marked this morning as
4 Petitioner's Exhibit 1?

5 A. Yes.

6 Q. If I were to ask you the same questions
7 this morning, would your answers be the same?

8 A. Yes.

9 Q. Your direct testimony makes reference to
10 certain exhibits, are these the attachments to
11 your direct testimony identified as Attachments
12 A, B, C, D, and E?

13 A. Yes.

14 Q. And were they prepared by you or under
15 your direction and supervision?

16 A. Yes.

17 Q. In addition, did you cause to be prepared,
18 in a written question and answer format, your
19 rebuttal testimony?

20 A. Yes.

21 Q. And is that contained in the document that
22 has been marked as Petitioner's Exhibit 2?

1 A. Yes.

2 Q. If I were to ask you the same questions
3 this morning as appear in Exhibit 2, would your
4 answers be the same?

5 A. Yes.

6 Q. Your rebuttal testimony makes reference to
7 a certain attachment. Is this attachment the one
8 identified as Attachment A to Petitioner's
9 Exhibit 2?

10 A. Yes.

11 Q. And was that prepared by you or under your
12 direction and supervision?

13 A. Yes.

14 MR. KUCERA: Thank you. Mr. Gilbert, I have
15 no further questions of the witness and I offer
16 into evidence Petitioner's Exhibits 1 and 2 and
17 the various attachments to them.

18 JUDGE GILBERT: Okay. I have a couple of
19 questions, but they won't go to admissibility.

20 Mr. Weging?

21 MR. WEGING: No objection to the evidence.
22 And, as indicated earlier, we have no

1 cross-examination for Mr. Mancuso.

2 JUDGE RILEY: Petitioner's Exhibits 1 and 2
3 and all attachments are admitted.

4 (Whereupon, Petitioner's
5 Exhibit Nos. 1 and 2 were
6 admitted into evidence as
7 of this date.)

8 EXAMINATION

9 BY

10 JUDGE GILBERT:

11 Q. Mr. Mancuso, can you hear me?

12 A. Yes.

13 Q. I have a couple of questions. If you
14 would take a look at page 2 of your rebuttal
15 testimony.

16 A. Okay. Hold on a second.

17 Q. All right.

18 A. Page 2?

19 Q. Yes.

20 A. Okay.

21 Q. And if you look at the answer that begins
22 on line 13 of page 2 of your rebuttal

1 testimony --

2 A. Okay.

3 Q. -- you refer there to some private lot
4 owners who are, as you say, currently failing to
5 pay for water or waste water service?

6 A. Yes.

7 Q. What do you mean by "failing to pay"?

8 A. No payment has been received. Normally,
9 we get monthly payments. So none has been
10 received for two years on one of them and a year
11 and a half on the other.

12 Q. And what do you do when that occurs? Or
13 what are you doing in these particular instances
14 given that you're not receiving payment?

15 A. What we've been doing presently is simply
16 sending them a letter -- a billing statement. We
17 do that every month and we haven't proceeded any
18 further than that.

19 Q. Have they continued to receive service?

20 A. Yes.

21 Q. Have you stated to them either orally or
22 in writing that you would discontinue their

1 service if they continued to fail to pay for
2 those services?

3 A. No, sir, we have not.

4 Q. Do you have any knowledge as to why they
5 are not paying?

6 A. I don't have any knowledge as to why
7 they're not paying.

8 Q. Okay. A general question not pertaining
9 to that particular testimony. Has anyone ever
10 requested that you provide either water or waste
11 water service outside the boundaries of the park?

12 A. No, nobody's ever requested that.

13 Q. Regarding your testimony, again, on page 2
14 of your rebuttal -- and if you'll look now at the
15 next question -- the question begins on line 17
16 and the answer at line 21.

17 What are you currently doing with
18 respect to those private owners who have not yet
19 entered into a written contract?

20 A. We have not proceeded further with that.

21 Q. Are there ongoing efforts to persuade them
22 to enter into a contract?

1 A. No, we have not.

2 Q. Okay. And you're continuing to serve
3 those persons?

4 A. Yes.

5 Q. And they're paying you?

6 A. Some are paying. Most are paying with the
7 exception of four individuals.

8 Q. Okay. How did you get the contracts that
9 you do have? I guess you say here that -- is it
10 15 of the 27 have written contracts; is that
11 correct?

12 A. Yes.

13 Q. How did that come about? Did you approach
14 them?

15 A. Yes. I provided them with a copy of a
16 proposal -- contract proposal.

17 Q. And that would be true as well with
18 respect to the persons who have not signed
19 contracts?

20 A. I don't know the answer to that question.
21 But I would assume that we would continue -- if
22 they're willing, we would continue that -- with

1 the contract that we propose.

2 Q. At some point, did you send out a proposed
3 contract to all of the private owners?

4 A. Yes, we did.

5 JUDGE GILBERT: Okay. That's all I have for
6 you. Any Staff cross based on my questions and
7 only within the scope of my questions?

8 MR. WEGING: Yeah.

9 CROSS-EXAMINATION

10 BY

11 MR. WEGING:

12 Q. Hi, Mr. Mancuso. This is Jim Weling for
13 the Commission Staff.

14 A. Yes, hi.

15 Q. In response to the ALJ's questions here,
16 you talked about the two parties that owed you
17 money or, at least, has not paid the water and/or
18 sewer bills for two years and one-and-a-half
19 years. Those are the same people that you
20 referred to in your response to the Staff Data
21 Request, which was OGC 1.9. I don't know if you
22 have it in front of you or not, they're both --

1 both surnames were Holmes in both cases?

2 A. Yes.

3 Q. So those are the same two people that you

4 pointed out in your data request response?

5 A. Yes.

6 MR. WEGING: Thank you. That's all I really

7 have.

8 JUDGE GILBERT: Mr. Kucera, any redirect for

9 your witness?

10 MR. KUCERA: No.

11 JUDGE GILBERT: That's it. Thank you,

12 Mr. Mancuso, for your participation.

13 THE WITNESS: Thank you very much.

14 JUDGE GILBERT: All right. Anything else,

15 Mr. Kucera, in your case?

16 MR. KUCERA: No.

17 MR. WEGING: I'd like to call Mr. Marr and ask

18 that he be sworn as well.

19 JUDGE GILBERT: All right. Mr. Marr, are you

20 with us?

21 MR. WILLIAM MARR: Yes, I am.

22 (Witness sworn.)

1 A WILLIAM MARRÁ,
2 called as a witness herein, having been first
3 duly sworn, was examined and testified
4 telephonically as follows:
5 DIRECT EXAMINATION
6 BY
7 MR. WEGING:
8 Q. Could you state your name and business
9 address for the record, please.
10 A. William D. Marr, 527 East Capitol Avenue,
11 Springfield, Illinois 62701.
12 MR. WEGING: Just for the record, his last
13 name is M-a-r-r.
14 THE WITNESS: That's correct.
15 BY MR. WEGING:
16 Q. And, Mr. Marr, did you prepare testimony
17 in this case?
18 A. Yes.
19 Q. And was that testimony marked as Staff
20 Exhibit 1.00 and consisted of 21 pages of
21 testimony?
22 A. Yes.

1 Q. And there were three attached exhibits
2 1.01, 1.02, 1.03; they multiple-paged exhibits,
3 however?

4 A. Yes.

5 Q. Do they -- if I were to ask you the
6 questions contained in Staff Exhibit 1.00, would
7 your answers be substantially the same as the
8 answers in Exhibit 1.00?

9 A. Yes.

10 Q. Did you have any changes, corrections or
11 additions to make to Staff Exhibit 1.00?

12 A. No.

13 Q. And the copies attached to your testimony,
14 the Staff Exhibits 1.01 through 1.03, those are
15 true and correct copies of the items therein, to
16 the best of your knowledge? Did you understand
17 me?

18 A. Yes. Yes.

19 Q. I'll repeat. Are Staff Exhibits 1.01
20 through 1.03, to the best of your knowledge, true
21 and accurate copies of what they claim to be?

22 A. Yes.

1 Q. Did you say something?

2 A. I didn't.

3 MR. WEGING: With that, Mr. ALJ, I would ask
4 for the admission of Staff Exhibit 1.00 with the
5 three attachments.

6 JUDGE GILBERT: First of all, is there any
7 objection?

8 MR. KUCERA: No objection.

9 JUDGE GILBERT: All right. These are marked
10 as separate exhibits, and I'm going to admit
11 them; that way, I'll admit statement 1.00, 1.01,
12 1.02, and 1.03.

13 (Whereupon, Staff
14 Exhibit Nos. 1.00 - 1.03 were
15 admitted into evidence as
16 of this date.)

17 MR. WEGING: It was whispered -- these are
18 actually on the E-docket as well.

19 In addition, Mr. ALJ, I have what has
20 been marked by the court reporter as Staff
21 Exhibit 2.0, which was a response by Mr. Mancuso
22 to a -- on behalf of his company to a Staff Data

1 Request marked OGC 1.19. The one being presented
2 is marked updated and revised because we received
3 an updated response yesterday. And by the
4 agreement of the parties, we were going to
5 stipulate it into the record.

6 This exhibit, however, was not prefiled
7 on E-docket.

8 JUDGE GILBERT: Okay. Mr. Kucera, I assume
9 Mr. Weging has accurately represented your
10 consent to the admission of this document?

11 MR. KUCERA: Yes.

12 JUDGE GILBERT: Staff Exhibit 2.00 is
13 admitted.

14 (Whereupon Staff
15 Exhibit No. 2.00 was
16 admitted into evidence as
17 of this date.)

18 MR. WEGING: With that, Staff has no
19 evidentiary presentation to make.

20 JUDGE GILBERT: I think we have a preexisting
21 briefing schedule. I don't know if the parties
22 want to continue to adhere to that or if you want

1 a different schedule.

2 MR. WEGING: Can we go off the record?

3 JUDGE GILBERT: Yes, we can. We're off the
4 record.

5 (Discussion off the record.)

6 JUDGE GILBERT: All right. We will continue
7 to adhere to the briefing schedule that was
8 agreed upon earlier. The parties simultaneous
9 initial briefs will be filed June 9th and
10 simultaneous reply briefs on June 23rd.

11 I assume electronic service is fine with
12 everybody?

13 MR. WEGING: That's fine.

14 MR. KUCERA: Yes.

15 JUDGE GILBERT: And for me, if you would send
16 me anything that you send it in Word. I imagine
17 you'll file a PDF, please serve me in Word. And,
18 if you will, send me a hard copy as well.

19 Anything else we need to address?

20 MR. KUCERA: I have nothing.

21 MR. WEGING: Nothing.

22 JUDGE GILBERT: The case is heard and taken.

1 Thank you.

2 (Heard and taken.)

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